



U.S. Department of Justice

*United States Attorney
District of Massachusetts*

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United States Courthouse, Suite 9200
1 Courthouse Way
Boston, Massachusetts 02210

November 18, 2004

Charles McGinty, Esq.
Federal Defenders Office
408 Atlantic Avenue
Boston, MA 02110

Re: United States v. Rivera, et al.
Criminal No. 04-10271-PBS

Dear Mr. McGinty:

This letter is in response to your correspondence dated November 2, 2004, and our discussions concerning your request for additional discovery. Specifically you have requested that this office provide you with a copy of all tapes and recordings in the case. As I indicated in my discovery letter of October 22, 2004, the government produced a copy of the recordings to Apex Reporting. Additionally, a letter was sent to Apex authorizing both you and co-defendant's counsel to obtain copies. A second set of recordings has been made available for your examination and review here at the U.S. Attorney's office at a mutually convenient time. I believe that the government has not only met, but exceeded the obligations set forth in Local Rule 116.4(A)(1) which provides:

(1) The government must provide at least one copy of all tape recordings in its possession that are discoverable for examination and review by the defendant parties. (Emphasis added)

I have made one set of recordings available for each defendant's use, by obtaining a copy from Apex, despite the requirement that I merely provide one copy for all defendants. Moreover, I have made a second set of recordings available for

your examination and review at my office. Clearly, the recordings have properly been made available to you in compliance with the government's discovery obligations.

Your suggestion that the government should provide a separate copy of all recordings to you is impractical. This office has a host of cases in which there are discoverable recordings. Time and financial restrictions prevent us from making individual copies of recordings for all defendants, particularly in light of the complex nature of the multiple defendant cases. Moreover, subsection (2) of the same local rule does not require it. It provides:

If a defendant requests additional copies, the government must make arrangements to provide or to enable that defendant to make such copies at that defendant's expense.

I anticipated a request for a copy by producing a set of the recordings to Apex copying to "enable" you to get your own set of recordings at your expense, thereby complying with this provision of Local Rule 116.4.

You have also requested any transcripts of the recordings. I do not have any at this time, and will produce transcripts that I intend to rely upon at trial in a timely fashion 21 days before trial in compliance with the Local Rules.

If you have any questions, please feel free to contact me.

Very truly yours,

MICHAEL J. SULLIVAN
United States Attorney

By:

/s/ Glenn A. MacKinlay
GLENN A. MACKINLAY
Assistant U.S. Attorney

cc: Dianalynn Saccoccio
Clerk to the Honorable Chief
Magistrate Judge Marianne B. Bowler